

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

| | | |
|----------------------------------|---|------------------|
| ARZELL WILKERSON, |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| CAPITAL ONE BANK, |) | CIVIL ACTION NO. |
| Defendant/Third Party Plaintiff, |) | 2:05 CV 1192-W |
| |) | |
| vs. |) | |
| |) | |
| ANTHONY WILKERSON, |) | |
| Third Party Defendant |) | |

MOTION FOR ENTRY OF DEFAULT

COMES NOW, Defendant/Third-Party Plaintiff Capital One Bank (“Capital One”) and, pursuant to Federal Rule of Civil Procedure 55(a), respectfully request the Clerk enter the default of Third-Party Defendant Anthony Wilkerson (“Mr. Wilkerson”) in this matter. In support of this request, Capital One says the following:

1. On February 2, 2007, Capital One filed a Third-Party Complaint against Mr. Wilkerson.
2. Mr. Wilkerson was personally served with the Third-Party Summons and Complaint on February 17, 2007.
3. On March 7, 2007, Mr. Wilkerson contacted counsel for Capital One, and counsel for Capital One informed Mr. Wilkerson that his response was due on March 9, 2007.

4. When Mr. Wilkerson failed to respond to the Third-Party Complaint, counsel for Capital One sent him a letter allowing additional time for him to respond to the Complaint. (A true and correct copy of the letter is attached hereto as Exhibit 1).

5. As the new deadline was approaching, counsel for Capital One sent Mr. Wilkerson a letter to remind him of the upcoming deadline. (A true and correct copy of the letter is attached hereto as Exhibit 2).

6. Mr. Wilkerson did not respond to either of Capital One's letters, nor has he filed a response in this matter.

7. Upon information and belief, Mr. Wilkerson is not an infant.

8. Upon information and belief, Mr. Wilkerson is not an incompetent.

WHEREFORE, PREMISES CONSIDERED, Capital One Bank respectfully requests that the Clerk enter Third-Party Defendant Anthony Wilkerson's default on the record, and that this matter be set for a hearing on damages.

Respectfully submitted, this the 31 day of April, 2007.

s/ Ramsey Duck

RIK S. TOZZI

C. RAMSEY DUCK

Counsel for Defendant, Capital One Bank

STARNES & ATCHISON, LLP

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EXHIBIT 1

**STARNES &
ATCHISON** LLP
ATTORNEYS AT LAW

C. Ramsey Duck
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Birmingham, AL 35259-8512
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E-mail: rduck@starneslaw.com

March 19, 2007

VIA CERTIFIED MAIL

Mr. Anthony Wilkerson
4375 Wares Ferry Road
Montgomery, Alabama 36109

RE: *Arzell Wilkerson v. Capital One Services, Inc.*
Circuit Court of Montgomery County, Alabama
Civil Action No.: CV-04-2865-TMH
Our File No.: 22728

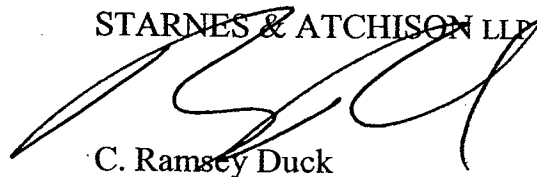
Dear Mr. Wilkerson:

I am writing to inform you that your deadline for filing an Answer to the Third-Party Complaint served on you by Capital One in this matter has now expired. If you intend to file an Answer in this matter, please do so within ten (10) calendar days of the date of this letter.

Thank you for your attention to this matter.

Sincerely,

STARNES & ATCHISON LLP



C. Ramsey Duck

CRD/kcs

cc: Rik S. Tozzi, Esq.

{B0690017}

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EXHIBIT 2

March 28, 2007

VIA CERTIFIED MAIL

Mr. Anthony Wilkerson
4375 Wares Ferry Road
Montgomery, Alabama 36109

RE: *Arzell Wilkerson v. Capital One Services, Inc.*
Circuit Court of Montgomery County, Alabama
Civil Action No.: CV-04-2865-TMH
Our File No.: 22728

Dear Mr. Wilkerson:

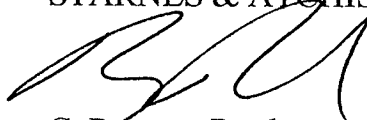
I am writing to follow up on my letter dated March 19, 2007 by which Capital One provided you an extra ten (10) days time within which to file a response to the Third-party Complaint filed against you in this matter.

When we spoke on March 7, 2007, you indicated that you had received the Summons and Complaint in this matter and that you would be consulting an attorney in order to determine your course of action. If you intend to file a response, I would again request that you do so no later than March 30, 2007.

Thank you for your attention to this matter.

Sincerely,

STARNES & ATCHISON LLP



C. Ramsey Duck

CRD/kcs

cc: Rik S. Tozzi, Esq.

{B0693891}

CERTIFICATE OF SERVICE

I hereby certify that on April 3rd, 2007, I served a copy of the foregoing by U.S.

Mail to the following individuals:

Norman Hurst Jr., Esq.
Attorney for the Plaintiff
462A Sayre Street
Montgomery, Alabama 36104-4124

Anthony Wilkerson
4375 Wares Ferry Road
Montgomery, Alabama 36109

s/ Ramsey Duck
RIK S. TOZZI
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